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## Appeal Decision

Site visit made on 17 February 2015

**by Jonathan Manning BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 March 2015**

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**Appeal Ref: APP/B1740/A/14/2219930**

**Land at Mountfield, Southampton Road, Dibden, Hampshire, SO45 5TA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Terry Langton (Guarantee Trust of Jersey Ltd) against the decision of New Forest District Council.
  - The application Ref 13/11623, dated 19 December 2013, was refused by notice dated 11 April 2014.
  - The development proposed is to erect 4 No. detached 4 bed chalet bungalows and 7 No. affordable dwellings (1 No. 3 bed house, 2 No. 2 bed houses, 2 No. 1 bed flats and 2 No. 2 bed flats).
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### Decision

1. The appeal is dismissed.

### Main Issues

2. As a result of the evidence before me and from my observations on the site visit, I consider the main issues of the appeal to be:
  - Whether the proposal would constitute unjustified development in the countryside;
  - The effect of the proposal on the character and appearance of the area;
  - The effect of the proposal on protected trees;
  - Whether sufficient information has been provided to demonstrate that there would be no harm to protected species;
  - Whether the proposal would constitute poor design with regard to the proposed footpath link;
  - The effect of the proposal on highway safety;
  - The effect of the proposal on the living conditions of the occupants of Depedene Cottage; and
  - Whether the proposal is required to make provision for financial contributions for public open space, transport and Special Area of Conservation (SAC) mitigation.

## Reasons

### *Development in the countryside*

3. The appeal site is located adjacent to the residential area known as Mountfield. The site is an area of grassland that accommodates many mature trees. The appeal site is located outside of the defined built-up area and therefore can be considered as being within the countryside. Policy DM20 of the New Forest District Council Site and Development Management Development Plan Document (2014) (the SDM) sets out that residential development in the countryside will be restricted except with regard to a number of exceptions. These include the provision of affordable housing to meet a local need in accordance with Policy CS22 of the New Forest District Council Core Strategy (2009) (the CS).
4. Policy CS22 of the CS sets out that new residential development will only be permitted in rural areas (i.e. beyond that provided for within the defined towns and villages, or in Policy CS12 as allocated small extensions to towns and larger villages) where it is for small scale affordable housing developments, developed to meet the identified needs of local people. The policy also sets out that suitable sites will be located within or adjoining an (undefined) village which either provides a range of local services and facilities or has good accessibility to larger settlements nearby.
5. The proposed development seeks to deliver affordable housing, although is not an allocated site under Policy CS12. The Council has identified that Policy CS12 sets out a local need for up to 50 additional affordable dwellings in Hythe. Policy HYD1 of the SDM allocates land at Forest Lodge Farm, which notes that the site has the potential to deliver around 40-45 new homes of which 70% should be for affordable housing.
6. I accept that the examining Inspector of the SDM did not require any further allocations to be made to address such a need. However, it is clear from the above that even with the delivery of Forest Lodge Farm, there will still be a local need for additional affordable housing in the Hythe area, which the proposal would provide. The Council has not questioned that the appeal site has accessibility to a good range of local services.
7. The proposal seeks to make provision for 7 affordable units as part of the 11 proposed dwellings and make an additional pro-rata financial contribution for affordable housing to ensure that the scheme delivers 70% affordable housing. I consider such an arrangement to be acceptable. A signed and dated Unilateral Undertaking (UU) has been provided that makes provision for the pro-rata financial contribution. The Council has raised concern that the UU does not secure the delivery of the 7 on-site affordable units and therefore cannot be relied upon. Whilst I accept that this is the case, a planning condition could be imposed to secure a suitable scheme for the provision of affordable housing, which would overcome this concern.
8. Given my findings above, I consider that the proposal meets the exception set out within Policy DM20 of the SDM and also complies with Policies CS22 and CS12 of the CS. Therefore, the proposal in principle would not result in unjustified development in the countryside.

9. I acknowledge that the Council considered the appeal site during the site allocation process as part of the preparation of the SDM and that it was not considered suitable for development. However, this was in relation to concerns with regard to landscape impact and protected trees, which are examined below.

*Character and appearance*

10. As identified above, the site is an area of grassland that accommodates many mature trees. I observed that this gives the appeal site a semi-wooded rural character. Whilst there is other residential development to the north and east, it was evident that the site and its semi-wooded character provide an important transition between the built development and countryside to the south and west.
11. I observed that despite the relatively low density of the proposal and the retention of the trees, the provision of 11 new dwellings, associated curtilages that would contain garden paraphernalia, access roads, driveways and parking areas would result in a significant urbanising effect that would unacceptably harm the semi-wooded character and appearance of the appeal site and the important contribution that the site makes to the wider area.
12. In conclusion, I consider that the proposal, by virtue of its urbanising effect would cause unacceptable harm to the semi-wooded character and appearance of the appeal site and its contribution to the wider area. The proposal therefore runs contrary to Policy CS2 of the CS, which sets out that developments should respect the character, identity and context of the area's towns, villages and countryside.

*Protected trees*

13. The appeal site accommodates a large number of trees, which are protected under two Tree Preservation Orders (TPOs). Whilst the layout of the proposed dwellings has in the large avoided protected trees and their root protection areas, I share the concerns of the Council with regard to the curtilages of Plots 1, 3 and 4.
14. Plot 1 and 4 would have mature oak trees with relatively low canopies within close proximity to habitable rooms, which have the potential to shade and have an overbearing presence to the proposed dwellings. Further, it is evident that the curtilages of Plot 3 and 4, whilst large would be almost entirely filled with trees, leaving little useable amenity space that would not be under the canopies of the trees. For both of these reasons, I consider that the proposal would lead to future pressure to fell the protected trees, which is likely to be hard to resist by the Council, given the number and proximity of the trees to the proposed dwellings.
15. The appellant has referred to several tree work applications that the Council has granted in close proximity to the appeal site. Whilst these are acknowledged, I consider that this gives weight to my view that the presence of the proposed dwellings would result in pressure to fell, thin or crown the protected trees within Plots 1, 3 and 4.
16. Given my findings above with regard to the harm that would be caused to the character and appearance of the area, the removal of protected trees would

also contribute to the unacceptable urbanisation of the appeal site and cause harm to its semi-wooded character.

17. In conclusion, I consider that it is reasonable to consider that it is highly likely that the proposal would result in significant pressure from future occupants of Plots 1, 3 and 4 to fell protected trees, which would be hard to resist by the Council. The loss of such trees would also cause harm to the semi-wooded character of the appeal site and the proposals unacceptable urbanising effect. The proposal therefore runs contrary to Policy CS2 of the CS, in this regard.
18. The Council has also raised concerns with regard to the proposed root bridge over the root protection area of a large oak tree and an ash tree on the entrance to the appeal site. I consider that there is sufficient detail within Drawing No 2013.431.01A to conclude that the roots of the protected trees would not be unacceptably harmed. I acknowledge that there is limited engineering detail, however, given the level of information provided and the appellant's appeal evidence, I consider that a suitable protection scheme is feasible and more details could be gained via a planning condition, which would address the Council's concern. However, this does not overcome my other concerns.

#### *Protected species*

19. The proposal is supported by an ecological survey, which concludes that the site '*offers a wide range of ecological niches for many different species, e.g. bats, badgers, reptiles, birds, invertebrates, etc.*'. The survey then sets out that further surveys for protected species on site will be required. However, no further assessments have been provided. The appellant is of the view that such surveys are necessary prior to any development taking place on the appeal site and that the matter could be overcome by securing the requirement to undertake the additional surveys by a pre-commencement planning condition.
20. However, I consider that it cannot be guaranteed to a suitable degree that should protected species be identified on the appeal site that suitable mitigation could be implemented to ensure that there would be no harm. Consequently, I consider that it would not be appropriate to address this matter by the imposition of a planning condition, particularly given the nature of the appeal site.
21. The appellant has referred to another development at 23 Birchwood Road, Poole. However, the planning application in that case was made in outline and the requirement for a wildlife survey of protected species was required as part of reserved matters. The development was also for a single dwelling, within an urban context and therefore not of a similar scale or nature to the proposed development. Further, I have no details with regard to the findings on any initial ecological surveys undertaken on the site in that case. Consequently, I consider that the development at 23 Birchwood Road is not directly comparable and this matter has not persuaded me to take a different view.
22. In conclusion, it has not been suitably demonstrated that the proposal will not cause harm to protected species. The proposal is therefore contrary to Policy CS3 of the CS and Policy DM3 of the SDM.

### *Footpath link*

23. The proposed development includes at its southern end, in between Plot 7 and 8 a footpath link. The proposed plans indicate the presence of a right of way running along the southern boundary of the site and I observed what appeared to be an overgrown historic footpath. The Council has set out that the path is not designated on either the definitive map of rights of way or the list of publicly-maintainable highways.
24. The appellant has suggested that as part of the development the overgrown vegetation within the disputed historic footpath would be cleared to allow for public access. This area does not, however, fall within the site boundary and it is not clear who owns the land. Consequently, its reinstatement as part of the proposed development cannot be relied upon as a benefit of the proposal.
25. The appellant as part of his appeal evidence has provided a copy of the Council's Mitigation Strategy for European Sites Supplementary Planning Document (2014) (the SPD). Page 46 of the SPD illustrates a plan showing the historic footpaths reinstatement as part of a proposed mitigation project that would provide a footpath link from Lower Mullins Lane to Dependene woodland and connect with footpath 'Hythe and Dibden 7'. As a result, I consider that there is likely to be a distinct possibility that the historic footpath may be reinstated sometime in the future and the footpath link within the site could be utilised.
26. Given these findings, I consider that this matter should not go against the proposal and the scheme complies with Policy CS2 of the CS, which requires developments to be well-designed and incorporate well integrated pedestrian routes.

### *Highway safety*

27. The Council has raised concern that the width of the first section of the shared vehicular access would be of an inadequate width to allow two vehicles to pass one another. In addition, concern is also raised that the site layout out does not incorporate adequate facilities to allow refuse or emergency vehicles to turn within the site and enter the adjacent highway in a forward gear.
28. It is evident from the Location Plan (J.14.2012 – 17 B) that the first section of the shared access could be widened to comply with the Highway Authority requirements, as there is sufficient land within the appellant's ownership. This matter could be addressed by a suitable planning condition requiring a revised design for the first section of the shared access to be submitted and agreed with the Council.
29. I consider that the Proposed Site Plan (J.14.2012 – 02 H) demonstrates that the turning heads in front of Plots 1, 2 and 8 could be increased in size and repositioned in order to allow refuse and emergency vehicles to be able to turn, without causing any harm to the roots of any protected trees. This could also be secured by a planning condition.
30. As a result of my findings above, I consider that the Council's concerns with regard to highway safety can be overcome through the imposition of appropriate planning conditions. Consequently, the proposal complies with Policy CS24 'Transport Considerations' of the CS.

### *Living conditions*

31. Plot 1 of the proposed development would be located in relatively close proximity to the neighbouring property known as Depedene Cottage and its associated curtilage. However, it is clear from the proposed plans that the proposed 4 bedroom chalet bungalow has been orientated to ensure that any views towards Depedene Cottage and its more intimate amenity space would be oblique. I also observed on the site visit that there is mature vegetation along the common boundary with Depedene Cottage that would provide a good level of screening.
32. For these reasons, I consider that there would not be any unacceptable actual or perceived overlooking of Depedene Cottage from the proposed dwelling at Plot 1. Consequently, I consider that the proposal would not cause harm to the living conditions of the occupants of Depedene Cottage and therefore complies with Policy CS2 of the CS. The policy seeks to ensure that new development does not cause unacceptable overlooking.

### *Financial contributions*

33. The Council are seeking financial contributions towards public open space, transport and SAC mitigation. A signed and dated UU has been provided by the appellant, which makes provision for financial contributions for public open space and transport. However, the UU makes no provision for SAC mitigation. Notwithstanding this, I am mindful that I am dismissing the appeal on other grounds and therefore this matter has not had a significant bearing on my decision.

### *Other matters*

34. Local residents have raised concerns that the proposal would lead to increased flooding, subsidence and would place unacceptable pressure on sewerage and drainage infrastructure. However, there is no substantive evidence before me to suggest that the proposal would cause any harm with regard to the above matters. I am also mindful that the Council do not share such concerns.
35. I accept the appellant's view that the development would provide for a mix of dwellings, including 4 bedroom properties. I also acknowledge that the proposed dwellings would be sustainably constructed to achieve a high 'Code' level and that each property would benefit from a rainwater harvesting system and a compost heap.

### *Conclusion*

36. The proposal would meet one of the exceptions to allow development in the countryside and is acceptable in terms of the proposed footpath link, highways and living conditions. The proposal would also provide benefits in the form of new housing of which a significant proportion would be affordable units, additional public space and those benefits set out under other matters above. However, I consider that these matters individually or in combination do not outweigh the identified development plan conflict, with regard to the harm that the proposal would cause to the character and appearance of the area and the developments potential to cause harm to protected trees and protected species.

37. Whilst there is a presumption in favour of sustainable housing development, I consider that the scheme does not constitute such development. For the reasons set out above and having regard to all other matters raised, the appeal is therefore dismissed.

*Jonathan Manning*

INSPECTOR

Richborough Estates